

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

THE BANK OF NEW YORK MELLON, f/k/a
The Bank of New York, as Trustee,

Case No. 2:17-cv-02024-KJD-GWF

ORDER

Plaintiff.

V.

GREEN VALLEY SOUTH OWNERS
ASSOCIATION, NO. 1, a Nevada corporation,
et al.,

Defendants.

15 Presently before the Court is Plaintiff's Motion to Lift Stay (#31). Though the time for
16 doing so has passed no response in opposition has been filed.

17 | I. Background and Analysis

18 This case emerges from the non-judicial foreclosure sale by Defendant Green Valley
19 South Owners Association, No. 1 on or about August 10, 2012 of the property located at 2856
20 Belleza Lane, Henderson, Nevada 89074 (“the Property”). This case shares a similar fact pattern
21 with many cases currently pending before this Court, all having to do with HOA foreclosure
22 sales. One of the issues before the Court centers in whole or in part around the question of what
23 notice of default the foreclosing party was required to provide Plaintiff prior to its foreclosure
24 sale on the Property. After the Nevada Supreme Court’s decision in SFR Invs. Pool 1, LLC v.
25 U.S. Bank, the Ninth Circuit decided Bourne Valley Court Trust v. Wells Fargo Bank, NA, 832
26 F.3d 1154, 1160 (9th Cir. 2016) (holding NRS 115.3116(2)’s statutory notice scheme was
27 facially unconstitutional).

²⁸ On April 21, 2017, in *Bank of New York Mellon v. Star Hills Homeowners Ass’n*, this

1 Court certified the following question to the Nevada Supreme Court: “Whether NRS §
2 116.31168(1)’s incorporation of NRS § 107.090 requires homeowners associations to provide
3 notices of default to banks even when a bank does not request notice?” Bank of New York
4 Mellon v. Star Hill Homeowners Ass’n, 2017 WL 1439671, at *5 (D. Nev. April 21, 2017).

5 In granting certification, the Court reasoned the following: In Bourne Valley, the Ninth
6 Circuit definitively answered the question that the statute’s “opt-in” framework was
7 unconstitutional. Bourne Valley Court Trust v. Wells Fargo Bank, NA, 832 F.3d 1154, 1160 (9th
8 Cir. 2016). However, that left the Court with the unresolved question of what notice must be
9 provided. “It is solely within the province of the state courts to authoritatively construe state
10 legislation.” Cal. Teachers Ass’n v. State Bd. of Educ., 271 F.3d 1141, 1146 (9th Cir. 2001). As
11 such, state law questions of first impression like this one should be resolved by the state’s
12 highest court. See Huddleston v. Dwyer, 322 U.S. 232, 237 (1944).

13 On August 2, 2018, the Supreme Court of Nevada answered the certified question. See
14 SFR Invs. Pool 1, LLC v. Bank of New York Mellon, 422 P.3d 1248 (Nev. 2018). Further, it has
15 since issued two new opinions that bear on the issues in this action. See Wells Fargo Bank, N.A.
16 v. Tim Radecki, 2018 WL 4402403 (Nev. September 13, 2018); Bank of America, N.A. v. SFR
17 Invs. Pool 1, LLC, 2018 WL 4403296 (Nev. September 13, 2018) (tender of the superpriority
18 amount prior to foreclosure results in buyer taking property subject to deed of trust).

19 **A. Stay of the Case**

20 A district court has the inherent power to stay cases to control its docket and promote the
21 efficient use of judicial resources. Landis v. North Am. Co., 299 U.S., 248, 254-55 (1936);
22 Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir. 200). The
23 only objection the parties had to lifting the stay was the pending certified question. A stay is no
24 longer necessary in this action where the certified question has already been decided.

25 **B. Briefing Schedule**

26 The parties may either file a stipulation or move the Court for a modified discovery plan
27 and scheduling order as necessary. If the parties fail to do so, dispositive motions are due no later
28 than forty-five (45) days after the entry of this order. Any future dispositive motions must

1 address the most recent case law applicable to the issues in this action.

2

3 **II. Conclusion**

4 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Lift Stay (#31) is
5 **GRANTED**;

6 IT IS FURTHER ORDERED that stipulations, motions to modify the discovery plan and
7 scheduling order, or in the absence of such stipulations or motions, dispositive motions are due
8 within forty-five (45) days after the entry of this order.

9 Dated this 17th day of October, 2018.

10 
11

12 Kent J. Dawson
13 United States District Judge

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28